

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of)

Replacement of Part 90 by)
Part 88 to Revise the Private)
Land Mobile Radio Services and)
Modify the Policies Governing Them)

PR Docket No. 92-235

and)

Examination of Exclusivity and)
Frequency Assignment Policies)
of the Private Land Mobile Radio)
Services)

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To: The Commission

REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

THE AMERICAN PETROLEUM INSTITUTE

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*Due to the Government Closure and Snow Closings.

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SUMMARY

The majority of commenters support the concept that, in the event that the FCC is granted the authority to impose competitive bidding or user fees on private users, that user fees would be the superior alternative. LMCC's "Protected Service Area" concept is meritorious as long as the participants are limited only to the members of the same general industry. A majority of commenters agrees that the resale or lease of excess PLMRS capacity is highly undesirable, would lead to the introduction of speculation, and would further complicate the efforts of PLMRS users to obtain and utilize spectrum for critical internal communications that directly affect the public health, safety and welfare. In the event that service consolidation occurs, one of the pools created should be an "Industrial Safety Service" pool which, at a minimum, should include communications systems from the petroleum, power, and railroad services that are employed for essential safety communications and are required by federal, state or local or industry codes or standards, for safety considerations, to provide redundant or highly reliable communications.

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**REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), hereby submits these Reply Comments in response to Comments filed with the FCC regarding the Report and Order ("Order") and Further Notice of Proposed Rule Making ("Further Notice")^{1/} adopted by the Commission in the above-styled proceeding. The date for filing these Reply Comments was extended from October 16, 1995 to November 20, 1995^{2/} and, subsequently, to January 5, 1996.^{3/}

^{1/} 60 Fed. Reg. 37148 (July 19, 1995).

^{2/} Order Extending Comment and Reply Comment Period, 60 Fed. Reg. 48490 (September 19, 1995).

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 350 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries. A discussion of API's active participation in this proceeding is included in the Preliminary Statement to its Comments and Supplemental Comments filed in this matter on November 20, 1995.

2. Over forty sets of comments, supplemental comments and statements were filed with the FCC on November 20, 1995 by individual licensees and organizations representing

^{3/} (...continued)

^{3/} Order Extending Comment and Reply Comment Period, 60 Fed. Reg. 53893 (October 18, 1995).

constituencies in the Private Land Mobile Radio Service ("PLMRS") industry.^{4/} Generally, significant opposition was expressed to the FCC proposals for subjecting PLMRS spectrum to auctions or user fees, and for allowing the resale or lease of excess system capacity.

^{4/} Aeronautical Radio, Inc. ("ARINC"); Alarm Industry Communications Committee ("AICC"); American Association of State Highway and Transportation Officials ("AASHTO"); American Automobile Association ("AAA"); American Gas Association ("AGA"); American Mobile Telecommunications Association ("AMTA"); Amtrak; American Petroleum Institute ("API"); American Public Transit Assoc. (APTA); American Trucking Associations ("ATA"); Association of Public-Safety Communications Officials-International, Inc. ("APCO"); Association of American Railroads ("AAR"); Boeing Company; Burlington Northern Santa Fe Corporation ("Burlington"); Canadian Pacific Railway Systems ("CPRS"); Coalition of Industrial and Land Transportation Radio Users ("Coalition"); CSX Transportation, Inc. ("CSX"); Ericsson; Forest Industry Telecommunications ("FIT"); Hewlett-Packard Company; City of Houston Police Department; Consolidated Comments of the International Municipal Signal Association and International Association of Fire Chiefs, Inc. ("IMSA/IAFC"); International Taxicab and Livery Association ("ITLA"); Land Mobile Communications Council ("LMCC"); Lojack Corporation; Manufacturers Radio Frequency Advisory Committee, Inc. ("MRFAC"); Motorola; Nebraska Public Power District; New York City Transit Authority ("NYCTA"); Nippon Telephone and Telegraph ("NT&T"); Norfolk Southern Corporation; PacifiCorp; Joint Pool Consolidation Proposal of the Personal Communications Industry Association, Industrial Telecommunications Association, Alliance of Motion Picture and Television Producers, Newspaper Association of America, and Telephone Maintenance Frequency Advisory Committee ("Joint Pool"); Schlumberger Meter Communications Systems ("Schlumberger"); Securicor Radiocom Ltd. ("Securicor"); Spacelabs Medical, Inc. ("Spacelabs"); Union Pacific Railroad Co.; United and Central Telephone Companies ("Sprint"); UTC, The Telecommunications Association ("UTC"); and Weyerhaeuser Co.

II. REPLY COMMENTS

A. **Spectrum Auctions Are Not Consistent With The PLMRS Services**

3. The vast majority of the commenters addressing the subject agreed that spectrum auctions were not an appropriate vehicle for managing the PLMRS spectrum or generating federal revenues.^{5/} For example, the Association of American Railroads ("AAR") emphasized that "The requirement for such safety-related communications services cannot be evaluated in terms of price or profit."^{6/} Moreover, and as LMCC pointed out, "prospective bidders would emerge from any such auction without any operating rights of legal or practical significance" because of the existing level of congestion in these bands.^{7/}

^{5/} ARINC at 12; AICC at 4; AASHTO at 4; AAA at 5; AGA at 4; APTA at 11-12; ATA at 9-11; APCO at 6-7; AAR at 28; Boeing at 3-9; Ericsson at 3; FIT at 16; Hewlett-Packard at 5-6; Houston Police Department at 1; ITLA at 11-12; LMCC at 17; Lojack at 4-6; MRFAC at 10-11; Motorola at 8; NPPD at 1-2; Securicor at 6; Pacific Corp. at 4; Spacelabs; UTC at 22-25; Union Pacific at 13; and Weyerhaeuser at 5.

^{6/} AAR at 30.

^{7/} LMCC at ¶ 29.

B. User Fees Do Not Enjoy Support, But Are Preferable to Spectrum Auctions

4. Many commenters noted that the FCC currently lacks statutory authority to impose user fees or conduct spectrum auctions in the PLMRS bands, despite its anticipation that it will receive such authority through the pending telecommunications or budget legislation. A majority of commenters indicated that user fees are not suitable for their particular service. Many commenters also noted that, if the choice is between spectrum auctions and user fees, then user fees should be selected.^{8/} API continues to believe that "reasonably calculated user fees are the superior alternative to competitive bidding for private user spectrum."^{9/}

C. Protected Service Areas ("PSAs") Are Preferable

5. LMCC suggested that "Protected Service Areas" or "PSAs" would be preferable to the previously suggested "exclusive use overlay" proposal.^{10/} API supports adoption

^{8/} ATA at 9-11; AMTA at 10; Securicor at 3; Sprint at 6; and Weyerhaeuser at 6.

^{9/} API at ¶ 5.

^{10/} LMCC at 15.

of the PSA concept and remains adamantly opposed to the overlay proposal. API is opposed to the introduction and use of channel exclusivity mechanisms in the private services that are calculated to ultimately convert private spectrum for commercial users.

D. Unanimous Consent Exists for Protecting Offset UHF Licensees

6. LMCC,^{11/} the "Joint Pool" commenters,^{12/} and API advocated that low power UHF licensees be permitted to obtain primary status if they either: (i) request their coordinates with a frequency coordinator and the FCC or; (ii) relocate to low power channels designated by the frequency coordinator. API and LMCC also argued that low power UHF licensees require a reasonable transition plan which allows existing offset licensees to obtain primary status. The plan would reflect the following schedule:

^{11/} LMCC at 12-13.

^{12/} Joint Pool Comments at pp. 12-13. As noted in fn.1, the Personal Communications Industry Association, Industrial Telecommunications Association, Alliance of Motion Picture and Television Producers, Newspaper Association of America, and Telephone Maintenance Frequency Advisory Committee, together filed one set of comments.

March 1 - September 1, 1996: low power licensees may declare if they wish to convert to primary status.

September 1, 1996 - March 1, 1997: frequency coordinators calculate which specific frequencies should be designated for low power operation; and

October 1, 1997: incumbent UHF offset licensees who have declared primary status must convert to 12.5 kHz equipment. The stay imposed on the acceptance of applications for the newly created 12.5 kHz channels would be lifted).^{13/}

7. Manufacturers of low power biomedical and utility data devices stated that their customers' operations should be specifically shielded by either an award of primary status or access to a defined set of protected low power channels.^{14/} API supports protecting critical low power UHF offset operations and notes that biomedical device operation is only one type of critical low power communication conducted on UHF 12.5 kHz offset channels. An extensive array of low power petroleum, petrochemical and pipeline operations must also fall under such protections. For example, large refineries located in highly populated Los Angeles, California rely on UHF 12.5 kHz low power offset

^{13/} Extensive discussions with Land Mobile Communications Council ("LMCC") representatives resulted in the creation of this low power offset transition plan. This same plan was highlighted in LMCC's comments, also filed on November 20, 1995.

^{14/} Hewlett-Packard at 2; Spacelabs at 2; and Schlumberger at 1-3.

channel systems. Hazardous materials are heated, chemically altered, and forced through miles of pipeline at this facility. The 24-hour-a-day operations of the refinery require complex maintenance and emergency response communications that are no less important than the operation of any other type of UHF low power offset system.

E. A Majority of Parties Oppose the Commercialization of PLMRS Through the Lease or Resale of Excess Capacity

8. The commercial type "market-force" arrangements contemplated by the lease or resale of excess capacity would, unwisely, encroach on the already congested PLMRS bands. API and a vast majority of other commenters opposed adoption of this proposal. While some PLMRS systems can be shared, many cannot because any unused capacity must be reserved for emergencies, on a day-to-day basis, and expansion on a long-term basis.

9. A majority of the commenters stated that channels newly created by narrowbanding should be awarded to those licensees who implement spectrum efficient narrowband systems or at least to the radio service from which those

new channels originated.^{15/} API supports this approach as a "market-force" concept which promotes efficient spectrum use without destroying the character of PLMRS services.

F. FCC Form 600 Requires an Overhaul

10. TIA's TR8 Working Group 8.8 Technology Compatibility Committee will soon release a report which is likely to recommend that the FCC gather much more data than it is currently through FCC Form 600. Safe and responsible coordination will not be possible without the benefit of such data. As such, API submits that FCC Form 600 will need to be materially revised through the rule making process to insure that it is structured in a manner that is fully responsive to operations in the narrowband environment.

III. CONSOLIDATION

11. Despite a series of LMCC-sponsored meetings, no unanimous consensus was obtained on service consolidation. API therefore filed Supplemental Comments in this matter which argued that the service consolidation proposed by the Commission should result in the creation of the following

^{15/} FIT at 18; ITLA at 12-13; MRFAC at 12; NT&T at 4; and PacifiCorp at 4.

five pools: Industrial Safety Service, Emergency Response Safety Service, Non-Commercial Radio Service, Specialized Mobile Radio Service, and General Category.^{16/} Petroleum, power, railroad and other industrial users who employ their systems for essential safety communications and are required by federal, state or local regulations or industry codes or standards, for safety considerations, to provide redundant or highly reliable communications to support their operations should be included in the Industrial Safety Service.

12. The consolidation positions of other commenters can be summarized into three general groups:

- (1) No Consolidation. One group of six users, the Coalition of Industrial and Land Transportation Radio Users, filed a statement urging the FCC to avoid service consolidation and maintain the current system.^{17/} A variety of other commenters supported this

^{16/} The Specialized Mobile Radio Service and General Category are included solely to accommodate the existing 800/900 MHz structure. It is not suggested that any refarmed spectrum be designed for either category.

^{17/} The Coalition was comprised of: ATA; AAR; Central Alarm Station Association; FIT; ITLA and MRFAC.

position.^{18/} API is not opposed to retaining the current system.

(2) Three Pools. UTC endorsed a three-pool concept which calls for Emergency Response,^{19/} Public Service,^{20/} and Business Commercial^{21/} pools. API supports the Public Service pool concept only to the extent that its elements mirror the API-endorsed Industrial Safety Service pool.

(3) Two Pools. The "Joint Pool" commenters submitted a consolidation plan consisting of only a "Public Safety" and a "Public Service" pool.^{22/} The Public Safety pool would be

^{18/} AASHTO at 2; AMTRAK at 2; CPRS at 2; Burlington at 1-3; CSX at 3-5; and Union Pacific at 3-10. ARINC simply stated that the use of Air Terminal Use (ATU) frequencies would be maximized only if a single frequency coordinator is designated for ATU.

^{19/} Police, Fire, Emergency Medical, and Special Emergency.

^{20/} Petroleum, Local Government, Highway Maintenance, Forestry-Conservation, Power, and Railroad.

^{21/} Forest Products, Film and Video Production, Relay Press, Special Industrial, Business, Manufacturers, Telephone Maintenance, Motor Carrier, Taxicab, and Automobile Emergency.

^{22/} Joint Pool at 2.

comprised of the six existing Public Safety Radio Services (Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation and Emergency Medical). All of the 14 other services, including the Petroleum Radio Service, would be thrown into the "Public Service" pool. The Joint Pool commenters argue for setting aside in the Public Service pool, through corresponding FCC Part 90 rule provisions, frequencies for "special requirements." Oil spill cleanup, emergency response, airline, slave locomotive, and railroad systems would fall under this "special requirements" provision. This element of the Public Service pool offering underscores the need for an Industrial Safety Service as proposed by API. Critical refinery, pipeline, petrochemical, utility, and other operations would not be protected, however, under the Public Service pool "special requirements" concept, thus further undermining its value. An Industrial Safety Service as proposed by API addresses the health, safety and welfare issues missing in the "Joint Pool" commenter proposal.

IV. CONCLUSION

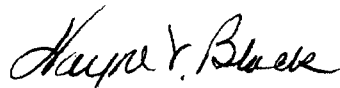
13. Should the FCC be granted the authority to impose competitive bidding or user fees for private service spectrum, API and the majority of commenters that addressed this issue believe that users fees would be the superior alternative. LMCC's "Protected Service Area" concept is meritorious as long as the participants are limited only to the members of the same general industry. A majority of commenters agrees that the sale or lease of "excess" PLMRS capacity is highly undesirable, would lead to the introduction of speculation, and would further complicate the efforts of PLMRS users to obtain and utilize spectrum for critical communications which directly affect the public health, safety and welfare. Should service consolidation occur, one of the pools created must be an "Industrial Safety Service" pool which includes communications systems from the petroleum, power, and railroad services who employ their systems for essential safety communications and are required by federal, state or local, or industry codes or standards, for safety considerations, to provide redundant or highly reliable communications.

WHEREFORE THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Reply

Comments and strongly urges the Federal Communications Commission to proceed in this matter in a manner fully consistent with the views expressed herein.

Respectfully submitted

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